

PARIS ACKERMAN & SCHMIERER, LLP

103 Eisenhower Parkway

Roseland, NJ 07068

(973) 228-6667

David S. Paris, Esq.

Attorney for Plaintiffs

AKL FOOD SERVICE, LLC, a New
Jersey Limited Liability Company

Plaintiffs,

vs.

TONY LUKE, INC., a Pennsylvania
Corporation, TRP MANAGEMENT
LLC, a Pennsylvania Limited Liability
Company, TL ENTERPRISES, LLC a
Pennsylvania Limited Liability
Company, RASTELLI FOODS GROUP,
INC., a New Jersey Corporation, TR
FRANCHISE, LLC, a New Jersey
Limited Liability Company,
UNIDENTIFIED CORPORATE
ENTITIES A-Z, ANTHONY
LUCIDONIO, SR., ANTHONY
LUCIDONIO, JR., ANTHONY
LUCIDONIO, III, RAY RASTELLI,
BILL PIZZICO, and JOHN DOES1-10.

Defendants.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION
MONMOUTH COUNTY

DOCKET NO.

COMPLAINT AND JURY DEMAND

The Plaintiff, AKL Food Service, LLC (“AKL”) (“Plaintiff”), by and through its attorneys Paris Ackerman & Schmierer, LLP, for its Complaint as against Defendants Tony Luke, Inc., TRP Management LLC, TL Enterprises, LLC, Rastelli Foods Group, TR Franchise,

LLC, Anthony Lucidonio, Sr., Anthony Lucidonio, Jr., Anthony Lucidonio, III, Ray Rastelli, Bill Pizzico, Jim West, Unidentified Corporate Entities A-Z and John Doe Individuals 1-10 (hereinafter collectively referred to as “Defendants”), respectfully allege as follows:

NATURE OF THIS ACTION

1. Tony Luke’s is a popular Philadelphia cheese steak restaurant chain, with corporate owned locations in downtown Philadelphia, Atlantic City’s Borgata Hotel & Casino, and Citizen Bank Ball Park – home to Major League Baseball’s Philadelphia Phillies.

2. This action is based on Defendants’ fraudulent scheme to sell a Tony Luke’s franchise to AKL without providing the requisite disclosures mandated by the Federal Trade Commission.

3. Specifically, Defendants failed to provide AKL with a Federal Disclosure Document (“FDD”)¹.

4. Defendants’ failure to provide the FDD, *inter alia*, gives rise to violations of the Federal Trade Commission Franchise Rule, 16 CFR 436 *et seq.* (“FTC Franchise Rule”).

5. In addition, Defendants’ malfeasance gives rise to violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8, *et seq.* (“NJCFA”).

6. In 2006, Tony Luke’s endeavored to increase its brand recognition and market presence by franchising its famous cheese steak restaurants.

7. In or about September 2006, Defendants sold their first New Jersey franchise to Plaintiff AKL.

¹ The FTC Franchise Rule requires sellers of franchises and business opportunities to provide prospective purchasers with a Franchise Disclosure Document. In 2006, at the time Tony Luke’s sold a franchise to AKL, the disclosure document was called a Uniform Franchise Offering Circular (“UFOC”). As of July 1, 2008, the standard document contents have been revised and the document is now known as a Federal Disclosure Document.

8. However, Defendants entered into a franchise relationship with AKL without ever providing it with the pre-sale disclosure document, known as the UFOC, as required under the FTC Franchise Rule.

9. In fact, although it has been more than two (2) years since AKL purchased its Tony Luke's franchised restaurant, its members still have not been provided the required disclosure documents.

10. Additionally, AKL and more specifically, its majority member Anastasios Linardos ("Linardos") relied on Defendants' material misrepresentations and omissions in deciding to purchase the subject Tony Luke's franchise. These material misrepresentations and omissions, included, without limitation: (i) severely understated start-up and operational costs; (ii) artificially inflated sales projections; and (iii) unlawful earnings claims, made in contravention to the requirements set forth under the FTC Franchise Rule.

11. Thus, in relying on Defendants' myriad misrepresentations and material omissions, which should have been disclosed in accordance with the FTC Franchise Rule, AKL sustained significant monetary losses and was forced to close its Tony Luke's franchised restaurant.

12. Based on the foregoing, AKL seeks monetary damages, statutory damages, and/or rescission of the franchise agreement.

PARTIES

13. Plaintiff AKL is a New Jersey limited liability company with its principal place of business in Monmouth County, New Jersey. AKL was formed for the purpose of owning, operating and developing certain Tony Luke's franchised restaurants. At least one of the members of AKL is a New Jersey resident.

14. Upon information and belief, Defendant Tony Luke, Inc. (“TLI”) is a Pennsylvania corporation with its principal business address at 1701 South 4th Street, Philadelphia, Pennsylvania 19148.

15. Upon information and belief, TLI conducts substantial business within the state of New Jersey, including but not limited to the sale of Tony Luke’s franchises.

16. Upon information and belief, TLI also owns and licenses certain of the Tony Luke’s trademarks and other intellectual property to AKL.

17. Upon information and belief, Defendant TRP Management LLC (“TRP”) is a Pennsylvania limited liability company with its principal business address at 1701 South 4th Street, Philadelphia, Pennsylvania 19148.

18. Upon information and belief, TRP conducts substantial business within the state of New Jersey, including but not limited to the sale of Tony Luke’s franchises.

19. Upon information and belief, TRP also owns and licenses certain of the Tony Luke’s trademarks and other intellectual property to AKL.

20. Upon information and belief, Defendant TL Enterprises, LLC (“TLE”) is a Pennsylvania limited liability company with its principal business address at 1701 South 4th Street, Philadelphia, Pennsylvania 19148.

21. Upon information and belief, TLE conducts substantial business within the state of New Jersey, including but not limited to the sale of Tony Luke’s franchises.

22. Upon information and belief, TLE also owns and licenses certain of the Tony Luke’s trademarks and other intellectual property to AKL.

23. Upon information and belief, Defendant TR Franchise, LLC (“TRF”) is a New Jersey limited liability company with its principal business address at 300 Heron Drive, Swedesboro, New Jersey 08085.

24. Upon information and belief, TRF conducts substantial business within the state of New Jersey, including but not limited to the sale of Tony Luke’s franchises.

25. Upon information and belief, Defendant Rastelli Foods Group (“RFG”) is a New Jersey corporation with its principal business address at 300 Heron Drive, Swedesboro, New Jersey 08085.

26. Upon information and belief, RFG owns an interest in one or more of the corporate entities responsible for forming and selling Tony Luke’s franchises.

27. Upon information and belief, RFG is the mandatory food purveyor for the Tony Luke’s franchise owned by Linardos (“RFG,” “TRF,” “TLE,” “TRP,” and “TLI” will collectively be referred to as the “Tony Luke’s franchising entities” or the “TLFE”).

28. Upon information and belief, Defendant Anthony Lucidonio, Sr. (“Tony Luke, Sr.”) is a resident of the state of New Jersey.

29. Upon information and belief, Tony Luke, Sr. maintains ownership interests in certain of the TLFE.

30. Upon information and belief, Tony Luke, Sr. was instrumental in the process of franchising Tony Luke’s restaurants and effectuating the deceptive scheme to defraud AKL more thoroughly described herein.

31. Upon information and belief, Defendant Anthony Lucidonio, Jr., (“Tony Luke, Jr.”) is a resident of the state of New Jersey.

32. Upon information and belief, Tony Luke, Jr maintains ownership interests in certain of the TLFE.

33. Upon information and belief, Tony Luke, Jr. was instrumental in the process of franchising Tony Luke's restaurants and effectuating the deceptive scheme to defraud AKL more thoroughly described herein.

34. Upon information and belief, Defendant Anthony Lucidonio, III ("Tony Luke, III") is a resident of the Commonwealth of Pennsylvania.

35. Upon information and belief, Tony Luke, III maintains ownership interests in certain of the TLFE.

36. Upon information and belief, Tony Luke, III was instrumental in the process of franchising Tony Luke's restaurants and effectuating the deceptive scheme to defraud AKL more thoroughly described herein.

37. Upon information and belief, Defendant Ray Rastelli ("Rastelli") is a resident of the state of New Jersey.

38. Upon information and belief, Rastelli maintains ownership interests in certain of the TLFE.

39. Upon information and belief, Rastelli was instrumental in the process of franchising Tony Luke's restaurants and effectuating the deceptive scheme to defraud Plaintiff AKL more thoroughly described and incorporated by reference herein.

40. Upon information and belief, Defendant Bill Pizzico ("Pizzico") is a resident of the state of New Jersey.

41. Upon information and belief, Pizzico was and is a member, agent or employee of the Prizim Group, a business consulting firm retained by the TLFE to oversee and assist with AKL's franchise.

42. Upon information and belief, Pizzico maintains ownership interests in certain of the TLFE.

43. Upon information and belief, Pizzico was instrumental in the process of franchising Tony Luke's restaurants and effectuating the deceptive scheme to defraud AKL more thoroughly described herein.

44. The true names and capacities, whether related entities, affiliates, subsidiaries or otherwise, of the defendants named as Unknown Corporate Entities A through Z, inclusive, are unknown to Plaintiffs who, therefore, sue those defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the defendants sued herein as Unknown Corporate Entities A through Z are and were the related entities, affiliates, and subsidiaries of each and every other corporate defendant and were at all relevant times acting within the course and scope of such agency and employment, and/or are legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to Plaintiffs as alleged herein. Plaintiffs will seek to amend this Complaint to allege the true names and capacities of such defendants when ascertained.

FACTUAL BACKGROUND

I. FEDERAL DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING AND BUSINESS VENTURE OPPORTUNITIES

A. The Commercial Relationship Between AKL and the TLFE Meets the FTC Definition of a Franchise

45. The FTC defines a franchise as an arrangement wherein: (i) the franchisee pays the franchisor for (ii) the right to sell goods or services under the franchisor's trademark and (iii) the franchisor exerts a "significant degree of control" over or gives "significant assistance" to the franchisee's "method of operation." 16 C.F.R. 436.2

46. AKL paid the TLFE a franchise fee in the amount of thirty five thousand dollars (\$35,000) in exchange for the right to sell cheese steaks and other products under the Tony Luke's trademarks.

47. AKL is required to pay the TLFE a weekly royalty² in the amount of 6% of gross sales in exchange for the right to sell cheese steaks and other sandwiches under the Tony Luke's trademarks.

48. The TLFE has granted AKL the right to sell goods and services under the Tony Luke's trademark, including but not limited to the sale of cheese steaks and other products offered by Tony Luke's.

49. The TLFE exerts a significant degree of control over AKL's business operations, and provide a significant amount of assistance, examples of which, include, without limitation:

- a. Requiring AKL to purchase certain mandatory equipment and furniture;
- b. Requiring AKL to order such equipment and furniture from certain mandatory vendors;
- c. Requiring AKL to purchase certain mandatory food products;
- d. Requiring AKL to purchase such food products from certain mandatory purveyors;
- e. Requiring AKL to sell certain menu items;

² The TLFE agreed to waive AKL's obligation to pay royalties during its first year of operations.

- f. Requiring AKL to use certain recipes for the menu items sold at its store;
- g. Requiring AKL to use certain proprietary food preparation methods and techniques;
- h. Requiring AKL to purchase and display certain signage bearing the Tony Luke's trademarks; and
- i. Designing the layout of AKL's franchised store.

B. Disclosure Requirements in Accordance With the FTC Franchise Rule

50. The sale of Franchises is universally regulated at the federal level³.

51. The FTC has established minimum standards in connection with the sale of franchises, including a **requirement** that all franchisors furnish each potential franchisee with a copy of the franchise agreement and a disclosure document prior to: (i) the execution of the franchise agreement; or (ii) the payment of consideration regarding the franchise. 16 C.F.R. 436.1

52. The disclosure document must provide specific information regarding the franchise concept, including the background of the franchisor, the cost of the franchise, termination and renewal of the franchise, and any restrictions in the franchise agreement. 16 CFR 436.1

53. The intention of the FTC is to require franchisors to provide information to prospects so that potential franchisees will be able to make an informed decision regarding the purchase of a franchise.

54. The FTC Franchise Rule states that in any franchise relationship, or any relationship which is represented either orally or in writing to be a franchise, *it is an unfair or*

³ Certain states throughout the United States have statutes regulating the sale of franchises on the state level.

deceptive act or practice for any franchisor to fail to furnish any prospective franchisee with the requisite disclosure document. 16 C.F.R. 436.1

55. Although the TLFE sold AKL a Tony Luke's franchise, they have never provided AKL with the required franchise disclosure document in direct violation of the FTC Franchise Rule.

II. THE FRANCHISE RELATIONSHIP BETWEEN AKL AND THE TLFE

A. The Initial Meeting

56. In or about August of 2005, a mutual friend introduced Linardos to Tony Luke, Jr. at the Tony Luke's restaurant located on Front Street and Oregon Avenue in Philadelphia, Pennsylvania.

57. During that meeting, Tony Luke, Jr. on behalf of TLFE, solicited Linardos to develop the first Tony Luke's franchise locations in New Jersey.

58. To entice Linardos, Tony Luke, Jr. boasted about the tremendous financial success his family had achieved in operating their family owned Tony Luke's restaurants in Philadelphia and New Jersey.

59. Tony Luke, Jr. assured Linardos that the success and popularity of his family-owned stores would translate into similar success for Linardos, if he opened and operated Tony Luke's franchises in New Jersey.

60. As part of his improper sales pitch, Tony Luke, Jr. made inappropriate and misleading earnings claims that he knew to be false, assuring Linardos that he would generate between \$1.5 and \$1.7 million dollars in gross sales at each Tony Luke's franchise restaurant he opened.

61. These earnings claims failed to comply with the FTC Rule governing franchises that dictates the form and manner in which such an earnings claim must be made.

B. Linardos' Decision to Purchase the Rights to Open and Operate Tony Luke's Franchise Restaurants

62. Shortly after their first meeting, Linardos contacted the TLFE to confirm his interest in developing Tony Luke's franchises in New Jersey.

63. During the ensuing conversations, to further entice Linardos to buy the franchise, Tony Luke, Jr., on behalf of the TLFE, represented that they would provide Linardos a discount on the standard fifty thousand dollar (\$50,000) initial franchise fee.

64. Tony Luke, Jr. also told Linardos that the TLFE would waive his royalty obligations for the first year of operations.

65. During these initial discussions, Tony Luke, Jr., on behalf of the TLFE, also made a number of material misrepresentations to Linardos. These material misrepresentations were used as a means to induce Linardos into purchasing his Tony Luke's franchises.

66. Tony Luke, Jr. further misled Linardos by assuring him that construction and equipment costs associated with building-out his initial store would be approximately \$425,000. This too was patently false.

67. Based on his reliance on Tony Luke, Jr.'s misrepresentations, Linardos agreed to purchase the rights to open fifteen (15) Tony Luke's franchise locations throughout four counties in southern New Jersey.

68. Thereafter, Linardos, along with his partners James Knicos and Leo Rossi, formed and funded AKL through which they purchased the rights to operate Tony Luke's franchise restaurants⁴.

69. On April 3, 2006, AKL paid a franchise fee to the TLFE in the amount of thirty-five thousand dollars (\$35,000.00).

70. Upon receipt of the franchise fee, Tony Luke, Jr. instructed Linardos to immediately locate and commence construction of his first store, while they awaited the completion of the required disclosure documents as explained herein, namely a Master Franchisee Agreement and Uniform Franchise Offering Circular ("UFOC").

C. Defendants' Violations of the FTC Franchise Rule

71. The TLFE failed to provide AKL with the federally mandated UFOC prior to selling AKL the rights to own and operate its Tony Luke's franchises and collecting AKL's franchise fee.

72. Such malfeasance gives rise to an unfair and deceptive practice under the FTC Franchise Rule

73. The TLFE further violated the FTC Franchise Rule by failing to provide AKL with the requisite time to review the required disclosure document prior to accepting its franchise fee.

74. Additionally, by failing to provide the proper disclosure to AKL, the improper earnings claim that Tony Luke, Jr. made to Linardos, on behalf of AKL, was not substantiated or formatted in accordance with the requirements of the FTC Franchise Rule.

⁴ Neither Knicos nor Rossi ever made any financial investment in AKL. As of December 15, 2008, Knicos and Rossi are no longer members of AKL, leaving Linardos as the sole member.

75. As a result of the TLFE's failure to make these mandatory disclosures, AKL was never apprised of certain material aspects of its franchise relationship with the TLFE.

76. For instance, the TLFE failed to disclose certain restrictions on the sources of products and services that AKL would be required to purchase.

77. The TLFE did not make the aforementioned disclosure even though it knew it intended to, and did in fact, price gouge AKL by requiring it to purchase essential products and services at supra-competitive prices from RFG, which owns an interest in one or more of the corporate entities that comprise the TLFE.

78. The TLFE also failed to disclose that it receives payments from certain third party vendors from which AKL was required to purchase goods and/or services.

79. The TLFE did not make the aforementioned disclosure even though it knew it intended to, and did in fact receive such payments from these third party vendors.

80. Had AKL been provided with the aforementioned information, Linardos would not have agreed to pay the franchisee fee or purchase the right to open and operate Tony Luke's franchises.

81. To date, the TLFE have never provided AKL with the required Tony Luke's disclosure document.

82. Yet, on January 10, 2009, **almost two and a half years** after AKL paid its initial franchise fee, the TLFE presented a "draft franchise agreement" to AKL in connection with its operation of the Tony Luke's franchise. However, no franchise disclosure document was presented with that franchise agreement either.

83. It is clear though, that TLFE is aware of its statutory obligations to provide a disclosure document even though it failed to do so.

84. On pages 42-43 of the “draft” franchise agreement provided to AKL, it specifically states, in all capital letters:

YOU ACKNOWLEDGE THAT WE HAVE PROVIDED YOU WITH A FRANCHISE DISCLOSURE DOCUMENT NOT LATER THAN FOURTEEN (14) DAYS BEFORE THE EXECUTION OF THIS FRANCHISE AGREEMENT, OR FOURTEEN (14) DAYS BEFORE ANY PAYMENT OF ANY CONSIDERATION, UNLESS STATE LAW REQUIRES A DIFFERENT PERIOD. (emphasis added)

85. Of course, AKL paid its franchise fee over two years ago, but to date has still never received the required disclosures to its detriment.

D. The Site Selection Phase of AKL’s Tony Luke’s Franchise

86. On or about September 2005 Linardos, along with Tony Luke, Jr. and Tony Luke, III, searched southern New Jersey for the ideal location to open his flagship Tony Luke’s franchise restaurant.

87. Initially, Linardos proposed a 1,700 square foot space that was available in the Mercer Mall, in Lawrence, New Jersey (the “Lawrence Location”.) The rent on the Lawrence Location was approximately \$3,500 per month.

88. Tony Luke, Jr. and Tony Luke, III denied the Lawrence location as “too small,” in favor of a 2,700 square foot location in Hamilton, New Jersey (the “Hamilton Location”). The rent on the Hamilton Location was and still is \$5,200 per month.

89. When Linardos expressed concern over the size of the Hamilton Location and the substantial rent, Tony Luke, Jr. assured him that: (i) the size was appropriate and necessary; and (ii) his sales would easily cover the rent expense.

90. Relying on Defendants’ representations, AKL signed a five year lease for the Hamilton Location, with a one year personal guarantee, and began the build-out phase of its store.

E. The Construction Phase of AKL's Tony Luke's Franchise

91. On May 25, 2006, Linardos, on behalf of AKL, met with: Rastelli, Tony Luke, Jr., Tony Luke III, Bill Pizzico, a representative of Mitchell Associates, an architectural firm, and a representative of Singer Equipment Company, Inc. ("Singer Equipment").

92. The meeting took place at the offices of the Prizim Group, a business consulting firm retained by the TLFE.

93. The purpose of the meeting was to discuss the scheduling and strategy of the construction phase of AKL's Hamilton, New Jersey franchise.

94. During the meeting, Linardos, on behalf of AKL, was provided with a "Tony Luke Junior **Franchise** Opportunities" Operations Manual – a comprehensive binder with five subsections titled: (i) Tactical Guidelines; (ii) Equipment; (iii) Signage; (iv) Furniture; and (v) Architecture and Construction.

95. During the meeting, Tony Luke, Jr., Pizzico and Rastelli represented that they were the main principals of TRP Management LLC, the entity that was franchising Tony Luke's cheese steak restaurants.

96. During the meeting, it was agreed that: (i) the TLFE would assume the costs associated with Mitchell Associates' architectural services; and (ii) that AKL would assume the costs for the equipment, furniture and build-out of its franchise store.

97. Although AKL complied with its obligations, the TLFE never paid Mitchell Associates for services rendered. As a result, Mitchell Associates filed a lawsuit against Linardos, Rastelli, and Rastelli Foods Group for the outstanding balance of \$19,500 (*GLO-L-001861-08*).

98. It was at this meeting that Linardos, on behalf of AKL, first learned that AKL was required to use Mitchell Associates as Tony Luke's mandatory architectural firm – even though he could have retained a less expensive firm on his own.

99. It was also at this meeting that Linardos, on behalf of AKL, first learned that AKL was required to use Singer Equipment as Tony Luke's mandatory furniture and equipment vendor – even though he could have purchased less expensive furniture and equipment on his own.

100. Had the members of AKL been provided with the required franchise disclosure documents in advance of AKL's paying the franchise fees to TLFE, they would have learned about these requirements prior to investing in the Tony Luke's system.

101. Following the May meeting, in or about October 2006, Tony Luke, III submitted an order to Singer Equipment for all of the equipment and furniture required to outfit AKL's Hamilton franchise store.

102. The total cost of the equipment was one hundred sixty five thousand dollars (\$165,000).

103. Upon information and belief, AKL was required to purchase additional unnecessary equipment so as to inflate the undisclosed rebates that were being paid to the TLFE by Singer Equipment.

104. In fact, approximately sixty thousand dollars (\$60,000) of the equipment that AKL was required to purchase was entirely unnecessary and has not been used.

105. AKL was not permitted to hire a different equipment and furniture vendor, nor was it permitted to have any input with respect to the equipment and furniture that was being

ordered for the store. Instead, the entire equipment list and all of the furniture in the store was selected and mandated by the TLFE.

106. Finally, despite the TLFE representations to the contrary and the failure to provide the requisite disclosure regarding the estimated initial investment, AKL was required to spend more than four hundred thousand dollars (\$400,000) on leasehold improvements.

107. In the end, despite having absolutely no control over the process, the total cost of the custom store layout, the leasehold improvements, and the custom designed equipment, all of which were exclusively controlled and mandated by the TLFE, amounted to more than \$700,000 – *exceeding the cost Defendants’ projections by more than \$300,000.*

F. AKL’s Hamilton, New Jersey Tony Luke’s Franchised Restaurant

108. In or about December of 2007, three weeks prior to opening, AKL was advised that it would have to order all food products from RFG.

109. This requirement was never disclosed to AKL before it paid the initial franchise fee even though Rastelli, RFG’s owner, maintained a significant ownership interest in the TLFE and receives financial benefits from AKL’s purchase of food products from RFG.

110. On or about December 22, 2007, AKL opened the Hamilton, New Jersey Tony Luke’s franchised restaurant (“Hamilton Store”).

111. In connection with the opening of the Hamilton Store, the TLFE issued press releases and were quoted in various public media endorsing the opening of its “first franchise.”

112. Six weeks after a relatively successful opening, AKL’s Tony Luke’s franchise began to hemorrhage money due to excessively high food costs and labor costs.

113. Specifically, AKL had become a captive consumer, required to purchase all food product from RFG at unreasonably high mark-ups, resulting in food costs approaching 40% of gross.

114. Had the members of AKL known that they would be required to purchase all of their food products from RFG, and that RFG would receive a profit from AKL's purchases, they would not have invested in the Tony Luke's franchise.

115. Additionally, given the needlessly large size of the Hamilton Location, AKL was required to staff the store with additional employees, raising labor costs to an estimated 40% of gross.

116. Since June of 2007, AKL has borrowed approximately nine thousand dollars (\$9,000) each month from Linardos, in an effort to meet overhead costs and continue operations.

117. On March 5, 2008, Linardos, on behalf of AKL, met with Tony Luke, Jr. and Rastelli at the RFG offices in Swedesboro, New Jersey to express his concerns regarding AKL's defunct franchise.

118. To date, the Defendants have not taken any meaningful steps to resolve AKL's operating issues.

119. Rather, Defendants continue to generate windfall profits from the massive quantities of food AKL is required to buy, at a premium, from their affiliate RFG.

120. As a result of Defendants' fraudulent conduct as alleged herein, AKL has sustained substantial monetary losses in an amount to be calculated at the conclusion of the discovery phase of this litigation.

COUNT I
FRAUDULENT INDUCEMENT

121. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though fully set forth herein.

122. Defendants made a series of false representations to AKL for the purpose of inducing it to invest in a Tony Luke's franchise as more fully discussed herein.

123. Defendants omitted or failed to disclose certain material information to AKL for the purpose of inducing it to invest in a Tony Luke's franchise.

124. Defendants' fraudulent conduct and scheme consisted of fraud by commission and omission, which commenced prior to AKL purchasing its Tony Luke's franchise.

125. Defendants' fraudulent conduct and scheme consisted of fraud by commission and omission, which continued throughout the term of AKL's operation of its Tony Luke's franchise.

126. As alleged with specificity herein, Defendants and/or their agents, employees, or those under their direct control, made numerous false representations to AKL and its members regarding the Tony Luke's business, which were intended to be relied on and were relied on by AKL in deciding to invest in the Tony Luke's franchise.

127. At the time the Defendants made the false statements, they knew or should have known that these representations were false, fraudulent and misleading.

128. Based exclusively upon Defendants' assurances, representations, and lack of knowledge of Defendants' omissions, Linardos, on behalf of AKL was fraudulently induced into purchasing its Tony Luke's franchise(s).

129. Defendants have benefited financially from their deceptive misrepresentations and omissions of material information.

130. As a result of AKL's reliance on Defendants' misrepresentations and omissions, AKL and Linardos sustained significant financial damages.

WHEREFORE, Plaintiff demands that judgment be entered against all Defendants, jointly and severally, Ordering:

- a. An award of monetary damages, as appropriate;
- b. An award of reasonable attorney's fees, interest, and costs;
- c. An award of punitive damages;
- d. The rescission of the contractual agreements between the parties; and
- e. Such other relief as this Court finds reasonable and proper.

COUNT II
VIOLATION OF THE NEW JERSEY
CONSUMER FRAUD ACT, N.J.S.A. 56:8-1, ET SEQ.

131. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs herein with the same force and effect as if fully set forth herein.

132. Plaintiff is a consumer as defined under the NJCFA.

133. The Tony Luke's franchise is merchandise as defined in N.J.S.A 56:8-1©.

134. Tony Luke's franchises are advertised and offered for sale to the public at large through print media and over the internet.

135. As alleged with specificity herein, Defendants engaged in unconscionable commercial practices, deception, fraud, false pretense, false promise, and misrepresentations as a means to induce Linardos into purchasing his Tony Luke's franchise(s).

136. As alleged with greater specificity herein, Defendants knowingly concealed, suppressed, and omitted material facts regarding the Tony Luke's business model with the intent that AKL rely upon such concealment, suppression or omission, when deciding to purchase of its Tony Luke's franchise(s).

137. The Hamilton Store is a franchise, as defined under the FTC Franchise Rule.

138. AKL paid an initial franchise fee in the amount of thirty five thousand dollars (\$35,000) to the TLFE for the right to open and operate its Tony Luke's franchise(s).

139. AKL was and is required to purchase all of the food products sold at its Tony Luke's franchise from the franchisor, through its affiliate RFG and this fact was never properly disclosed to AKL.

140. Moreover, the TLFE never properly disclosed that they received a financial benefit from AKL's purchases of food, supplies, equipment and other products and services required to be used in connection with the Tony Luke's franchise.

141. The sandwiches and other food products served at AKL's Tony Luke's franchise are identified by the Tony Luke's trademark, trade name, and advertising.

142. Defendants provided AKL with a comprehensive "Tony Luke Junior's **Franchise Opportunities**" Operations Manual.

143. Defendants provided AKL with outlines and schedules branded with the Tony Luke's trademarks, that referred to AKL as "the franchisee."

144. Defendants referred to AKL as a franchisee in various forms of media.

145. Defendants exert a significant degree of control over AKL's method of operation, including but not limited to, its business organization, promotional activities, management, marketing plan and business affairs.

146. Defendants failed to provide AKL with the appropriate disclosure document required under the FTC Franchise Rule, thereby violating the statute.

147. Defendants' violation of the FTC Franchise Rule constitutes a per se violation of the NJCFA.

148. As a direct result of the Defendants' misconduct as alleged herein and throughout this complaint, AKL has suffered economic damages in an amount to be proved at trial.

WHEREFORE, Plaintiff demands that judgment be entered against Defendants, Ordering:

- a. An award of monetary damages, as appropriate;
- b. An award of its reasonable attorney's fees, interest, and costs;
- c. An award of treble damages pursuant to N.J.S.A. § 56:8-19; and
- d. Such other relief as this Court finds reasonable and proper.

COUNT III
VIOLATION OF THE COVENANT OF
GOOD FAITH AND FAIR DEALING

149. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs herein with the same force and effect as if fully set forth herein.

150. Defendants' misconduct as alleged herein constitute material breaches of the implied covenant of good faith and fair dealing arising from and under the franchise agreement entered into between the TLFE and AKL.

151. Defendants have denied AKL the ability to achieve its reasonable expectations in entering the franchise relationship.

152. As a direct and proximate cause of Defendants' breach of the implied duty of good faith and fair dealing, AKL has suffered and continue to suffer substantial monetary damages which cannot be finally calculated until the conclusion of the discovery proceedings in this action.

WHEREFORE, Plaintiff demands that judgment be entered against Defendants, Ordering:

- a. An award to the Plaintiff of monetary damages in the amount of its actual damages as well as punitive damages;
- b. An award to the Plaintiff of reasonable attorneys' fees, interest, and costs; and
- c. Such other and further relief the Court deems proper

COUNT IV
NEGLIGENT MISREPRESENTATION

153. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint with the same force and effect as though fully set forth herein.

154. Defendants negligently made false statements, misrepresentations and omissions of material fact to AKL regarding the Tony Luke's franchise opportunity as alleged with specificity herein.

155. Plaintiff justifiably relied upon these false statements, misrepresentations and omissions of material fact in deciding to purchase its Tony Luke's franchise.

156. As proximate result of AKL's reasonable reliance on the Defendants' false statements, misrepresentations, and omissions of material fact, AKL has suffered damages.

WHEREFORE, Plaintiffs demand that judgment be entered against all Defendants,

Ordering:

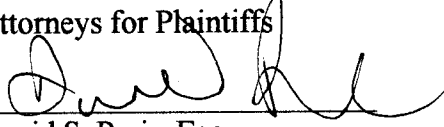
- e. An award of monetary damages equal to each Plaintiff's present and future losses in an amount to be proven at trial;
- b. An award to the Plaintiffs of its reasonable attorney's fees, interest, and costs;
- c. The rescission of the contractual agreements between the parties;
- d. Punitive damages; and
- e. Such other and further relief the Court deems proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, David S. Paris, Esq. is hereby designated as trial counsel herein

Dated: April 13, 2009

PARIS ACKERMAN & SCHMIERER, LLP
Attorneys for Plaintiffs



David S. Paris, Esq.
103 Eisenhower Parkway
Roseland, NJ 07068
(973) 228-6667
(973) 629-1246
David S. Paris, Esq.
Attorney for Plaintiffs

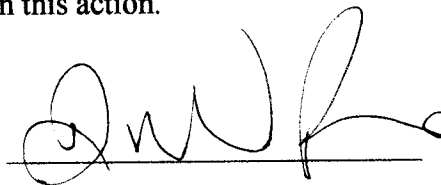
JURY DEMAND

Plaintiff hereby demands trial by jury of all issues so triable and hereby designate David S. Paris as trial counsel.

CERTIFICATION OF NO OTHER ACTION PENDING

The undersigned certifies that to the best of his knowledge, the within matters in controversy are not the subject of any other action pending in any other Court or of a pending arbitration proceeding nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

Dated: April 13, 2009

A handwritten signature in black ink, appearing to read 'D. Paris', written over a horizontal line.

David S. Paris, Esq.